

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3414 of 2002

with

SPECIAL CIVIL APPLICATION No 6054 to 6078 of 2002

with

SPECIAL CIVIL APPLICATION Nos. 6833 to 6841 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

AHMEDABAD MUNICIPAL TRANSPORT SERVICES
RETIRED PENSIONS KARAMCHARI MANDAL

Versus

TRANSPORT MANAGER A.M.T.S.

Appearance:

MR PRABHAKAR UPADYAY for Petitioner in SCA
No.3414/2002
MR GOVIND V PATEL for petitioners in SCA Nos.6833 to
6841 and 6054 to 6078 of 2002
MR HS MUNSHAW for Respondent-AMTS
MR MG NAGARKAR for Respondent-AMC
MR AD OZA, GOVT. PLEADER for State Government
MR PJ MEHTA for Regional P.F. Commissioner

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/10/2002

COMMON ORAL JUDGEMENT

Rule in Special Civil Application Nos. 6833 to 6841 and 6054 to 6078 of 2002. With the consent of the learned counsel for the parties, the petitions are taken up for final disposal today.

2. In this group of petitions under Article 226 of the Constitution, the Association of retired pensioners of the Ahmedabad Municipal Transport Services (AMTS) has prayed for a direction to the Transport Manager, AMTS, the Municipal Commissioner, Ahmedabad Municipal Corporation and the Board of Trustees of the Ahmedabad Municipal Transport Services (Employees' Provident Funds Scheme) to pay the retired employees of AMTS all their unpaid retiral dues such as provident fund, gratuity, pension, commuted pension, leave encashment and other benefits alongwith interest at the rate of 24% p.a.. The petitioners have also prayed for a direction to the respondents to pay the retired employees the arrears of difference of dearness allowances and other monetary benefits.

3. At the hearing on 20.9.2002, Mr Munshaw, learned counsel for the AMTS had pointed out the outstanding dues payable to the retired employees as computed till 31.7.2002 (Annexure "C" to the reply affidavit) and also the other outstanding dues of the AMTS as on 31.7.2002 (at Annexure "D" to the reply affidavit dated 6.9.2002). Mr Munshaw has stated that the AMTS is paying monthly pension to the retired employees regularly and that there is no dispute about the liability of the AMTS to pay the arrears of provident fund, gratuity, leave encashment and other amounts computed in Annexure "C" to the reply affidavit which work out to Rs.5,87,39,000/-. If the retired employees were to be paid commuted pension as per their request, a further liability of Rs.3.55 Crores would be there. But the AMTS does not propose to accept the request for commuted pension. In any case, there is no dispute about the liability of Rs.587.39 lacs as on 31.7.2002 as stated in Annexure "C" to the reply affidavit.

However, in view of the financial constraints pointed out in the reply affidavit, the hearing of these petitions was adjourned today to enable the learned counsel for the AMTS to find out whether the AMTS would be making any attempt to make payments towards the aforesaid retiral dues of the retired employees of the

AMTS.

4. Today, Mr Munshaw states, under instructions, that the AMTS is in serious financial difficulties and is not in a position to make payment of any outstanding dues of the retired employees except the payment of monthly pension. It is stated that the AMTS also does not have the funds to repair the buses so as to enable the AMTS to make the entire fleet of 700 buses road worthy and that only about 400 buses are being plied. It is further stated that even for paying the current salaries to the existing employees of the AMTS, the AMTS has to borrow funds from other authorities. In response to a query from the Court as to how the AMTS runs the show currently, Mr Munshaw points out that every month the AMTS borrows a loan of about Rs. 3 Crores on an average from the Ahmedabad Municipal Corporation and that against the said scenario, the AMTS, far from earning any net income, incurs a loss of about Rs.3 Crores per month.

5. On the other hand, Mr Prabhakar Upadhyay and Mr GV Patel, learned counsel for the retired employees state that apart from the fact that the respondents have not paid the arrears of gratuity from December, 2000 onwards to 242 employees as stated in Annexure "C", the AMTS has not even paid P.F. amounts to the employees after June, 2001 and that the P.F. dues as worked out by the AMTS itself are to the tune of Rs.256.75 lacs as on 31.7.2002. It is submitted that these were the amounts deducted from the salaries of the petitioner-employees while they were in service and the AMTS had no right or authority to utilize or divert the said funds. It is further submitted that if any private employees were to do so, they would have been subjected to severe criminal action and liabilities.

6. The Court finds that the following amounts are payable to the retired employees as on 31.7.2002 as set out in Annexure "C" to the reply affidavit :-

Particulars	Period	No.of employees	Amount Rs.in lacs

Gratuity	Dec.2000 onwards	242	282.58
Provident Fund	June 2001 onwards	238	256.75

Leave encash- June 2001 42.06
ment

Pension 6.00

(5th Pay Commission)

587.39

7. There would be further liability thrust on the AMTS if the retired employees were to be paid commuted pension as 327 employees had made such request by 31.7.2002 and that the amount would work out to a further liability of about Rs.355.41 lacs. Looking to the extreme financial difficulties of the AMTS, the Court does not give any direction regarding the request made by the retired employees for payment of commuted pension, more particularly because the retired employees have been getting full monthly pension and, therefore, the AMTS in such a precarious financial position cannot be compelled to give the retired employees commuted pension which is really speaking one third of the monthly pension payable in future being paid as a lumpsum in advance.

8. In any view of the matter, since the amounts to the tune of about Rs.6 Crores are admittedly payable by the AMTS to the retired employees and the AMTS does get the loans from the Ahmedabad Municipal Corporation, at the rate of about Rs.3 Crores per month, the authorities in charge of Ahmedabad Municipal Transport Service are directed to make the payments as under :-

(i) The amounts of Provident Fund, gratuity, leave encashment and other retiral benefits (except commuted pension) shall be paid to the retired employees of the AMTS as expeditiously as possible by making such arrangements as the authorities may consider proper for this purpose, but in any case, the authorities shall pay the retired employees the amounts of Provident Fund by 30th June, 2003 with a clarification that the authorities shall be liable to pay interest on the amounts due and payable to the employees in accordance with the provisions of AMTS Employees P.F. Scheme.

(ii) As far as the other dues i.e. gratuity, leave encashment and arrears of difference of pension/dearness allowance are concerned, the authorities in charge of the AMTS shall pay such

dues to the retired employees by 30th June, 2004.
As far as these amounts are concerned, the authorities shall be liable to pay interest at the rate of 9% per annum for any time taken beyond 30th June, 2003, but in any case the amounts shall be paid by 30th June, 2004.

(iii) Looking to the ensuing diwali festival, the authorities are also directed to take necessary steps to ensure that the retired employees do get a part of their Provident Fund amounts by 30th October, 2002.

9. The petitions are accordingly disposed of in terms of the aforesaid directions.

Rule is made absolute to the aforesaid extent only with no order as to costs.

Direct Service is permitted by 19-10-2002.

(M.S. Shah, J.)

sundar/-